



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-5171



Catherine A. Bliss
42 Pine Brook Lane
West Hartford, CT 06107

Administrative Order by Consent
No. WD 01-14

A. Introduction

This Administrative Order by Consent No. 01-14 is issued by the New Hampshire Department of Environmental Services, Water Division, to Catherine A. Bliss with the consent of Catherine A. Bliss pursuant to RSA 485-A:42, I(a). This Administrative Order by Consent is effective upon signature by both parties.

B. Parties

1. The New Hampshire Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH 03302-0095.
2. Catherine A. Bliss, formerly Catherine A. Feigenbaum, is an individual having a mailing address of 42 Pine Brook Lane, West Hartford, CT 06107.

C. Statements of Fact and Law

1. Pursuant to RSA 485-A:29, *et. seq.*, DES is required to regulate, *inter alia*, the design, installation, and maintenance of individual sewage disposal systems ("septic systems") and to adopt, administer, and enforce rules relative to the design, installation, and maintenance of septic systems. Pursuant to this authority, DES has adopted NH Admin. Rules Env-Ws 1000.
2. RSA 485-A:29, I requires, *inter alia*, that plans and specifications for new septic systems be submitted to DES and that approval for the plans and specifications be obtained prior to the installation of any new septic system.
3. RSA 485-A:38, I provides that "[p]rior to expanding any structure or occupying any existing structure on a full-time basis, which would increase the load on a [septic system], the owner of such structure shall submit an application for approval of the [septic system] to [DES]."
4. Env-Ws 1004.14 explains that the expansion of a structure or use of a structure which triggers the requirement to submit an application for approval of the septic system includes "any modifications, additions, or replacements of any structure, or use of any structure which would result in any increase in the load on a [septic system], or ... commencing full-time occupancy of a structure".

5. RSA 483-B, the Comprehensive Shoreland Protection Act, sets forth certain restrictions on development in the protected shoreland zone, finding that “[t]he shorelands of the state are among its most valuable and fragile natural resources and their protection is essential to maintain the integrity of public waters.” RSA 483-B:1, I.

6. RSA 483-B:9, V(d)(2) specifies that “in areas dependent upon on-site sewage and septic systems, the total number of residential units in the protected shoreland ... shall not exceed one unit per 150 feet of shoreland frontage.”

7. Catherine A. Bliss is the owner of certain real property located at 41 Great Bay Drive East, Greenland, NH, more particularly described in Town of Greenland tax maps as Map 14, Lot 4 (“the Property”).

8. The Property consists of approximately 21,250 square feet. When measured as required by Env-Ws 1002.39, the frontage on Great Bay is less than 300 feet. The Property includes one 2-bedroom single-family residence and a detached garage.

9. The buildings on the Property are served by an on-site well and an on-site septic system. No public sewer or water is currently available to serve the Property.

10. Sometime during 1996 to 1997, a “studio loft apartment” was constructed over the garage. The apartment included living space and eating, cooking, and sanitation facilities.

11. Wastewater (other than toilet wastes) generated from the studio loft apartment was piped to a 55-gallon drum and then emptied onto or into the soil on the Property. Although this constitutes a new septic system, no application for approval of this system was ever submitted to DES and no approval for this system was ever issued by DES.

12. In 1997, a second kitchen was added to the single-family residence on the Property.

13. A “Caretaker Agreement” dated March 28, 1997 between Catherine A. Feigenbaum (now Bliss), Wayne C. Feigenbaum, and Irene G. Gray, recorded in the Rockingham County Registry of Deeds at Book 3322, Page 1581, assigns portions of the premises at 41 Great Bay Drive East Greenland, to Irene Gray, Catherine Feigenbaum/Bliss, and Barbara Bliss.

14. DES received no application for expansion of the existing on-site septic system to address the increased loading to the system resulting from the allocation of the premises to three (3) separate dwelling areas.

15. On February 19, 1999, DES issued Letter of Deficiency WD SS 99-01 (“LOD”) to Wayne C. Feigenbaum and Catherine A. Feigenbaum (now Bliss). The LOD noted that the load on the septic system had been increased in violation of RSA 485-A:38 by converting the single-family residence into a duplex through the construction of a second kitchen within the home, that an unapproved system had been installed to serve the third residential unit over the garage, and that the creation of two additional residential units on the Property violated RSA 483-B, the Shoreland Protection Act, due to inadequate shoreland frontage on the Property.

D. Determinations

1. Catherine A. Bliss has violated RSA 485-A:29, I by installing a new septic system to serve the dwelling unit created in the garage without obtaining prior approval of the system from DES.
2. Catherine A. Bliss has violated RSA 485-A:38, I and Env-Ws 1004.14 by increasing the load on a subsurface sewage disposal system without obtaining approval of a design for a septic system capable of handling the increased load from DES.
3. Catherine A. Bliss has violated RSA 483-B:9, V(d)(2) by creating three residential units on a lot having less than 300 linear feet of shoreland frontage.
4. The determinations set forth in the preceding three (3) paragraphs, although unintentional, are acknowledged by Catherine A. Bliss.

E. Order

Based on the above findings and determinations, DES, with the consent of Catherine A. Bliss, hereby orders Catherine A. Bliss to undertake and complete the following according to the specified time frames:

1. Within thirty (30) days of the date of this Order, permanently remove all water supply pipes, fixtures, fittings or other components of any water delivery system(s) leading to the garage and studio loft apartment that can be removed without demolition of walls, and permanently disconnect and disable any remaining portion of the water delivery system(s) leading to the garage and studio loft apartment.
2. Within thirty (30) days of the date of this Order, permanently remove the 55-gallon drum disposal system serving the studio loft apartment and all its component parts including pipes, fixtures and fittings of any kind that can be removed without demolition of walls, and permanently disconnect and disable any remaining portion of the drum disposal system
3. Within ten (10) days of the date of this Order, execute and record in the Rockingham County Registry of Deeds the Declaration of Restrictive Covenants for 41 Great Bay Drive East, Greenland, NH appended hereto and incorporated into this Order by reference.

Please address correspondence to:

Richard J. de Séve, Compliance Supervisor
DES Subsurface Systems Bureau
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

F. Stipulated Penalties; Penalties for Past Violations

1. Catherine A. Bliss shall be liable for the stipulated penalties provided for in Paragraph 2 of this section for failure to comply with either the terms of this Administrative Order by Consent ("Order") or the Declaration of Restrictive Covenants for 41 Great Bay Drive East, Greenland, NH ("Declaration") within the time frames specified in this Order or the Declaration.

2. Catherine A. Bliss shall pay the following stipulated penalties to the State of New Hampshire for any non-compliance with the terms of this Order or any non-compliance with the terms of the Declaration:

- a. \$500 per day for the 1st through 15th day beyond the specified deadline;
- b. \$750 per day for the 16th through 30th day beyond the specified deadline;
- c. \$1,000 per day for each day after the 30th day beyond the specified deadline.

3. Any penalties that become due pursuant to these provisions shall be paid upon demand by DES. Payment shall be by certified check made payable to "Treasurer, State of NH" and mailed or delivered to:

Attn: James Ballentine, Paralegal
DES Legal Unit
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

4. If Catherine A. Bliss complies with the terms of this Order and the terms of the Declaration, DES will waive its right to assess and collect penalties for the past violations of RSA 485-A and RSA 483-B as noted in this Order.

5. Notwithstanding the above-noted stipulated penalties, DES reserves the right to pursue other remedies or sanctions, if necessary, should Catherine A. Bliss fail to comply with the terms of this Order or the terms of the Declaration. Such remedies and sanctions may include, but are not limited to, administrative penalties, injunctive relief, and referral of this matter to the NH Attorney General's Office for judicial action.

G. Waiver of Appeal; Other Provisions

1. By entering into this Order, Catherine A. Bliss waives all rights to appeal the Order or the Declaration and waives all rights to any hearing on or appeal of the stipulated penalties as noted in F.2, above.

2. All provisions of this Order and the Declaration shall apply to and be binding on Catherine A. Bliss and her heirs, successors and assigns.

3. No failure by DES to enforce any provision of this Order following any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of DES's right to enforce each and every provision of this Order upon any further breach or default.

4. The effective date of this Order will be the latest of the dates on which it is signed by Catherine A. Bliss, the Director of the DES Water Division, and the Commissioner of DES. After that date, this Order may be amended only by written agreement signed by both parties.

Date: 3/21/01

COPY

Catherine A. Bliss

Date: April 13, 2001

COPY

Harry T. Stewart, P.E., Director
DES Water Division

Date: 4-13-01

COPY

Robert W. Varney, Commissioner
Department of Environmental Services

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made and entered into by and between Catherine A. Bliss (formerly Feigenbaum), of 42 Pinebrook Lane, West Hartford, Connecticut, hereinafter "Owner"; Irene G. Gray, of Greenland, County of Rockingham, State of New Hampshire, hereinafter "Caretaker"; and the State of New Hampshire Department of Environmental Services, of 6 Hazen Drive, Concord, New Hampshire, hereinafter "NHDES". Catherine A. Bliss is the owner of certain real property located at 41 Great Bay Drive East in Greenland, Rockingham County, State of New Hampshire ("the Property"), conveyed to Wayne C. Feigenbaum and Catherine A. Feigenbaum (now Bliss) by deed of Irene G. Gray dated December 23, 1996 and recorded in the Rockingham County Registry of Deeds at Book 3193, Page 955. Catherine A. Bliss became the sole owner of the Property as a result of the divorce decree entered in the State of Connecticut, Judicial District of Hartford, Superior Court, dated September 28, 1999 and by quitclaim deed of Wayne C. Feigenbaum, dated November 15, 1999 and recorded in the Rockingham County Registry of Deeds at Book 3440, Page 2454. Owner hereby makes the following declarations as to limitations, restrictions, and uses to which the Property may be put and hereby specifies that such declarations shall constitute covenants running with the land, as provided by law, and that these covenants shall be binding on all parties and all persons claiming under her, and are for the benefit of and are limitations on all future owners of the Property and the public.

Acceptance of a deed for the Property by any person shall constitute acceptance of these covenants, regardless of whether such deed is expressly made subject thereto.

WHEREAS, Owner is the owner of the Property; and

WHEREAS, Owner and Caretaker have entered into a Caretaker Agreement recorded in the Rockingham County Registry of Deeds, at Book 3322, Page 1581; and

WHEREAS, NHDES, Owner, and Caretaker have entered into an Administrative Order by Consent No. WD 01-14 ("Order") on or about even date herewith, which alleges certain violations of NH RSA 483-B:9, V(d)(2), NH RSA 485-A:29, I, and NH RSA 485-A:38, I and NH Code of Administrative Rules Env-Ws 1004.14; and

WHEREAS, in order to comply with the herein cited statutes and rules and to satisfy the Order, the parties hereto agree as follows:

- 1 That the premises located on the Property, consisting of a two-story, two (2) bedroom single family residence and a detached garage with a finished loft located above, is and shall be used solely and exclusively as a single family, two (2) bedroom residential unit.
- 2 That the two (2) bedroom single family residence located on the Property shall contain no more than two (2) bedrooms until such time as the Property is serviced by a state-approved public sewer system or an expanded septic system, approved by NHDES, is installed on the Property.

3. The two (2) bedroom single-family residence shall not contain any unit(s), apartment(s), duplexes, or condominium(s) capable of being separately demised, but shall only be used as a two (2) bedroom single-family residential unit. Any structural components which prevent the consolidation of the living spaces within the single-family residence on the date of execution of this Declaration by Owner and Caretaker shall be removed within 30 days of such date.
4. That the sections of Paragraph 4 of the Caretaker Agreement filed with the Rockingham County Registry of Deeds on September 1, 1998 at Book 3322, Page 1581 which discuss future leasing of the premises on the Property shall be, and hereby are, superceded by Paragraph 3 of this Declaration, which provides for the consolidation of all living space within the residence on the Property into a single two (2) bedroom single-family residence.
5. That the existing plumbing providing a water supply to the loft located above the detached garage at the Property shall be permanently disconnected within 30 days of execution of this Declaration by Owner and Caretaker.
6. That Barbara Bliss, the daughter of Caretaker, shall be allowed to reside in the loft area above the detached garage on the Property until the earlier of (1) her death, (2) the termination of the Caretaker Agreement recorded in the Rockingham County Registry of Deeds at Book 3322, Page 1582, or (3) such time as Barbara Bliss shall voluntarily vacate the said loft for a continuous period of six (6) months.
7. That upon termination of the residency of Barbara Bliss in the loft located above the detached garage on the Property, the loft shall not again be used for residential purposes.
8. That overnight occupancy of the Property, including reasonable overnight guests, shall be limited in numbers and duration to that which is commensurate with the NHDES septic loading standards for a two (2) bedroom residential unit. The Property shall not be leased or rented in any manner which results in a violation of the restriction provided in Paragraph 1 of this Declaration.
9. That any modification, expansion, repair or replacement of the existing septic system shall be in accordance with all applicable state and local laws and rules including, without limitation, design criteria established by NHDES, and any such proposed modification, expansion, repair or replacement shall be submitted in advance to NHDES for review and approval, and shall not be undertaken unless approval is received from NHDES.
10. That these covenants shall be binding on Owner and Caretaker until the currently existing grandfathered two (2) bedroom septic system at the Property is replaced by:
 - a. A connection to a state-approved public sewer system, in which case this Declaration shall terminate upon recordation by Owner at the Rockingham County Registry of Deeds of a certification by the local official in charge of the wastewater treatment facility to which the Property is connected, reasonably acceptable in form and substance to NHDES, that the connection is lawful and in accordance with all

Declaration of Restrictive Covenants

Page 3 of 4

applicable local requirements; or

- b. An expanded septic system, reviewed and approved in advance by NHDES, in which case this Declaration shall terminate upon recordation by Owner at the Rockingham County Registry of Deeds of a certification by a New Hampshire professional engineer, reasonably acceptable in form and substance to NHDES, that the expanded septic system has been installed in accordance with plans reviewed and approved by NHDES.
11. That the provisions of this Declaration regarding the use and occupancy of the Property shall be binding on Owner, Caretaker, and their heirs, successors and assigns, and shall be recorded by Owner at the Rockingham County Registry of Deeds within 10 days of execution of this Declaration by all parties.
12. That these covenants, reservations and restrictions shall be enforceable by proceedings at law or equity which may be brought by the State of New Hampshire or the Town of Greenland.
13. That these covenants shall not be amended except by a recorded Amendment or Modification to these covenants which shall be consented to and executed by NHDES and the Town of Greenland Building Inspector.
14. That invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions of these covenants, which shall remain in full force and effect.

WITNESS our hands this 13th day of April, 2000.

Yvonne R. Lemaire-Watt
Witness

Catherine A. Bliss
Catherine A. Bliss, Owner

Elizabeth B. Larsen
Witness

Irene G. Gray
Irene G. Gray, Caretaker

STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES

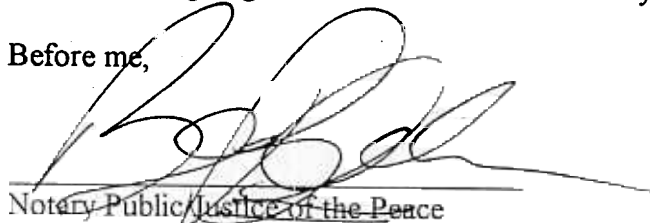
John C. Bl
Witness

By: Robert W. Varney
Robert W. Varney, Commissioner

STATE OF New Hampshire
COUNTY OF Rockingham

Then personally appeared before me the above-named Catherine A. Bliss, known to me, or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged the foregoing instrument to be her voluntary act and deed

Before me,



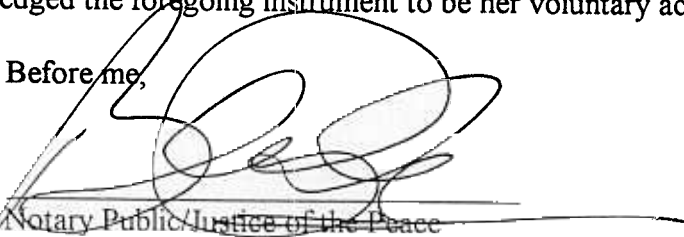
Notary Public/Justice of the Peace
My commission expires:

BERNARD W. PELECH, Notary Public
My Commission Expires March 3, 2004

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Then personally appeared before me the above-named Irene G. Gray, known to me, or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged the foregoing instrument to be her voluntary act and deed.

Before me,



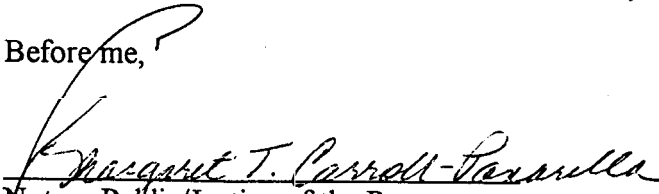
Notary Public/Justice of the Peace
My commission expires:

BERNARD W. PELECH, Notary Public
My Commission Expires March 3, 2004

STATE OF NEW HAMPSHIRE
COUNTY OF ~~ROCKINGHAM~~ MERRIMACK

Then personally appeared before me the above-named Robert W. Varney, known to me, or satisfactorily proven to be the persons whose name is subscribed to the foregoing instrument, and acknowledged the foregoing instrument to be his voluntary act and deed.

Before me,



Notary Public/Justice of the Peace
My commission expires:

MARGARET T. CARROLL-PANARELLA, Notary Public
My Commission Expires October 22, 2002